
DEVELOPMENT AND CONDITIONAL ZONING AGREEMENT

This Development and Conditional Zoning Agreement is hereby certified and agreed to this _____ day of _____, 2005, by and between Whitehead Oil Company, a Nebraska corporation, hereinafter referred to as "Developer," and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City".

RECITALS

I.

Developer has petitioned the City for a change of zone (No. 05067) from R-6 Residential District to B-3 Commercial District upon the following described property generally located between K and L Streets and 21st and 22nd Streets ("Property"). The Property is legally described as:

Lots A, B, C, D, E, F and G, McMurtry's Subdivision, and vacated Cadwallader's Court adjacent on the north lying between 21st Street and Capitol Parkway; and Lot 3 except that part of Lot 3 more particularly described as follows:

Beginning at the northeast corner of said Lot 3; running thence southerly along the east line of said Lot 3, a distance of 19.70 feet; thence northerly along the arc of a circular curve bearing to the left, whose radius is 914.93 feet and whose long chord is 44.82 feet to a point on the north line of said Lot 3; thence easterly along the north line of said Lot 3, a distance of 40.39 feet, to the point of beginning;

Together with all of Lot 4, Cadwallader's Subdivision of Outlot 1, McMurtry's Addition, and all of the north-south alley adjacent to said Lot 4, and Lot 6 and the south 10 feet 2 ½ inches of Lot 5, as measured on the west end of said Lot 5, in Cadwallader's

Subdivision of Outlot 1, McMurtry's Addition, and Lot 2, Jorgensen's Subdivision of Lot 5 and the south 20 feet of Lot 6, Block 5, in Avondale Addition, and the north 17 feet 7 inches of Lot 5, Cadwallader's Subdivision of Outlot 1, McMurtry's Addition, and a part of Lot 3, Block 5, Avondale Addition, more particularly described as follows:

Beginning at the southwest corner of said Lot 3 and proceeding northerly along the west line of said Lot 3, a distance of 4.71 feet; thence southeasterly along a curved line lying 40.00 feet southwesterly of and parallel to the centerline of L Street, a distance of 11.61 feet to the south line of said Lot 3; thence westerly along said south line, a distance of 9.60 feet to the point of beginning; and a part of Lot 4, Block 5, Avondale Addition, more particularly described as follows:

Beginning at the southwest corner of said Lot 4 and proceeding northerly along the west line of said Lot 4, a distance of 25.41 feet; thence southeasterly along a curved line lying 40.00 feet southwesterly of and parallel to the centerline of L Street, a distance of 54.10 feet to the east line of said Lot 4; thence southerly along said east line, a distance of 4.71 feet to the southeast corner of said Lot 4; thence westerly along the south line of said Lot 4, a distance of 50.00 feet to the point of beginning; all in Lincoln, Lancaster County, Nebraska;

II.

The request for the change of zone to B-3 Commercial District is to allow the Property to be used for a gas station/convenience store, fast food restaurant, and car wash.

III.

The aforementioned proposed use of the Property does not conform to either the land use plan contained in the Downtown Master Plan or the Antelope Valley Redevelopment Plan. Existing plans for the area address architectural design and detail as it relates to the existing character. A typical, modern, combined gas station/convenience store, fast food restaurant, and car wash establishment does not blend well into an area such as this, which is characterized by traditional materials and reduced setbacks.

IV.

The Developer has represented to the City that, if the Property is rezoned to B-3 Commercial District, the Developer will develop the Property as described in Recital II above and

agree said development will be subject to use restrictions, architectural design criteria, limited signage, restrictions on lighting, and the provision of pedestrian amenities and landscaping in order to provide a compatible development with the Downtown Master Plan and Antelope Valley Redevelopment Plan.

V.

The City desires Developer to enter into this Agreement to be assured that the Developer will develop the Property as represented should the Property be rezoned to B-3 Commercial District.

NOW, THEREFORE, Developer and City mutually agree to the following terms and conditions as the Development and Conditional Zoning Agreement for the subject Property.

1. The City hereby agrees to grant Developer's amended petition to change the zoning map from R-6 Residential District to B-3 Commercial District on the Property.

2. In consideration for the City rezoning the Property to B-3 Commercial District, the Developer agrees to develop the Property in accordance with the sit plan attached hereto as Exhibit 1.

3. As further consideration for granting the B-3 Commercial District zoning on the Property, Developer agrees to comply with the following restrictions:

a. Uses:

(1) The following permitted uses in the B-3 district are prohibited:

(a) Milk distribution stations, but not involving any bottling on the premises; (b) Food storage lockers;

(2) The following conditional uses in the B-3 district are prohibited:

(a) Furnace, heating, sheet metal, electrical shops or electrical contractors, heating and air conditioning contractors, and cabinet shops or stores; (b) Tire stores and sales, including vulcanizing; (c) Recycling centers;

(3) The following special permitted uses in the B-3 district are prohibited: (a) Broadcast towers; (b) Wind energy conversion systems;

(4) All display items for sale and signage for such items shall be located in the main building or in designated areas screened to block view from the adjacent right-of-way, unless modified below.

b. Architecture:

(1) Primary material on all facades of main building, not including glass area, shall be non-painted red or brown face brick. All on-site structures shall have consistent architectural features, detailing, and design elements. All accessory building walls, screening walls or fences, and canopy columns shall use the same primary material, color, and detailing as on the main building. Secondary building colors shall be white or earth tones.

(2) Overall canopy height shall not exceed 17 feet. The canopy fascia shall not exceed 3 feet in depth, and shall extend at least 2 feet below the canopy ceiling and block the direct view of the light sources from the adjacent right-of-way.

c. Signs:

(1) Detached signs: Limited to one ground sign at the site entrances along North 21st Street and L Street. Maximum height shall be 8 feet, maximum size shall be 50 square feet. Bases shall be constructed of brick to match the building.

(2) Wall signs: Limited to one sign on each building facade. Maximum size shall be 25 square feet. Signs shall be designed with individually applied letters or symbols.

(3) Canopy fascia: Limited to signs and logos required by parent company. Where alternative signs or logos are allowed, the smallest option shall be utilized.

(4) Pump islands: Limited to signage applied to the dispensing cabinet. Maximum size shall be 4 square feet per pumpface.

d. Lighting:

(1) Canopy: Average illuminance must not exceed 30 footcandles at grade directly under the canopy. Individual light fixtures shall not exceed 250 watts. Fixtures shall be completely recessed and flush with the canopy ceiling with flat, translucent lenses. Canopy columns shall not have individual light fixtures. No lighting shall be mounted on or above the canopy fascia. Canopy fascia shall not be internally illuminated.

(2) Buildings and pole lighting: All lighting fixtures mounted on buildings or poles shall be full cut-off design and aimed downward. Lenses shall be shielded or recessed so the light source is not directly visible from the adjacent right-of-way. Buildings may not be illuminated by ground mounted flood lighting. Building canopies shall not be internally illuminated.

(3) Average maintained illuminance shall not exceed 5 footcandles except directly under the canopy area.

e. Pedestrian Amenities:

(1) An outdoor pedestrian plaza area shall be provided, at least 400 square feet in area, with seating, located in front of the west-facing facade, and shaded with trees and/or other shade devices, as shown in Exhibit 1.

(2) Public sidewalk shall be extended along "K" Street and "L" Street from 21st Street east to the internal sidewalk as shown on the site plan (Exhibit 1) and pedestrian walkways shall extend from the public sidewalk on "K" Street and "L" to the walkway along the west-facing building facade, as shown on Exhibit 1. On-site pedestrian walkways shall be constructed with differently textured or colored surfaces across the driving aisles, and shall be signed and marked for pedestrian safety as required by the City Traffic Engineer.

f. Landscaping:

(1) Must meet the requirements of the B-2 rather than the B-3 zoning district. Existing trees shall be preserved where possible.

(2) Large trash receptacles for business use and any outside storage areas must be screened from the adjacent right-of-way.

g. Acquisition of City-Owned Property:

(1) Certain portions of the site are currently owned by the City of Lincoln. Prior to receiving a building permit, such property shall be acquired, or easements or permits for its use shall be obtained, allowing the development of the site as depicted in Exhibit 1.

(2) Should the acquisition of such property or easements or permits be denied, the site plan shall be revised, consistent with this agreement, to excluded those areas not owned by developer.

h. Easements and Right-of-Way:

(1) Easements shall be provided for all existing and future utilities to the satisfaction of the City, and recorded with the Register of Deeds prior to receiving building permits.

(2) Prior to the transfer of title to any City property, the City shall retain any portion of such parcel as right-of-way or retain such easements as the City may deem necessary for the continued operation, maintenance, and future needs of the right-of-way.

i. Required Improvements:

(1) Developer shall construct a continuous median within 21st Street between "K" Street and "L" Street, to the satisfaction of Public Works, providing left-turn lanes.

(2) Developer shall construct a left-turn lane in "L" Street, to the satisfaction of Public Works, providing access to the site.

(3) Developer shall install a pedestrian-actuated traffic signal at 22nd Street when warranted and recommended by the Director of Public Works. As part of said installation the Developer shall extend the sidewalk in K Street to 22nd Street.

(4) Existing electric poles shall be removed and the overhead electric line shall be relocated underground in a location and manner approved by LES.

j. Site Access:

- (1) Access at 21st Street shall be right-in/right-out only.
- (2) Access at "K" Street shall be left-out only.
- (3) Access at "L" Street shall be left-in only.

4. This Agreement is binding upon the parties herein and their respective successors and assigns.

5. This Agreement, when executed by the parties herein, shall be recorded by the City in the office of the Register of Deeds of Lancaster County, Nebraska, filing fees to be paid by Developer.

IN WITNESS WHEREOF the parties herein have executed this Agreement on the day and year set forth above.

WHITEHEAD OIL COMPANY,
a Nebraska corporation

By: _____
Mark A. Whitehead, President

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

Mayor

[illegible]

The foregoing Agreement was acknowledged before me this _____ day of _____, 2005, by Mark A. Whitehead, President of Whitehead Oil Company, a Nebraska corporation, on behalf of said corporation.

Notary Public

[illegible]

The foregoing Agreement was acknowledged before me this _____ day of _____, 2005, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

The site plan is not attached and will be distributed as soon as it is available.